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General Insolvency Counsel for Appellees, Debtors and Debtors-in-Possession

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

In re:

- ☐ X-TREME BULLETS, INC.
- ☐ AMMO LOAD WORLDWIDE, INC.
- ☐ CLEARWATER BULLET, INC.
- ☐ FREEDOM MUNITIONS, LLC
- ☐ HOWELL MACHINE, INC.
- ☐ HOWELL MUNITIONS & TECHNOLOGY, INC.
- ☐ LEWIS-CLARK AMMUNITION COMPONENTS, LLC
- ☐ COMPONENTS EXCHANGE, LLC
- ☒ All Debtors.

Debtors and
Debtors-in-Possession.

UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
ALCOHOL AND TOBACCO TAX AND
TRADE BUREAU,

Appellant,

vs.

X-TREME BULLETS, INC., AMMO LOAD
WORLDWIDE, INC., CLEARWATER
BULLET, INC., FREEDOM MUNITIONS,
LLC, HOWELL MACHINE, INC., HOWELL
MUNITIONS & TECHNOLOGY, INC.,
LEWIS-CLARK AMMUNITION
COMPONENTS, LLC, COMPONENTS
EXCHANGE, LLC, KASH CA, INC.; DAVID
HOWELL, Z.B. N.A. dba ZIONS FIRST
NATIONAL BANK, CFO SOLUTIONS, LLC
dba ADVANCED CFO, Matthew McKinlay
and Valerie Grindle

Appellees.

District Court Case No. 3:19-cv-637-MMD

Bankruptcy Case No. 18-50609-btb

Jointly Administered with

Bk. Case Nos. 18-50610-btb; 18-50611-btb;
18-50613-btb; 18-50614-btb; 18-50615-btb;
18-50616-btb; and 18-50617-btb

Chapter 11 Proceedings

**DEBTOR-APPELLEES' RESPONSE TO
UNITED STATES'S MOTION TO
VACATE DEADLINES; CERTIFICATE
OF INTERESTED PARTIES**

1 **TO THE HONORABLE MIRANDA M. DU, UNITED STATES DISTRICT COURT**
 2 **JUDGE, AND THE MOVANT, UNITED STATES OF AMERICA ON BEHALF OF THE**
 3 **DEPARTMENT OF THE TREASURY ALCOHOL AND TOBACCO TAX AND TRADE**
 4 **BUREAU:**

5 X-Treme Bullets, Inc., Ammo Load Worldwide, Inc., Clearwater Bullet, Inc., Freedom
 6 Munitions, LLC, Howell Machine, Inc., Howell Munitions & Technology, Inc. (“HMT”), Lewis-
 7 Clark Ammunition and Components, LLC and Components Exchange, LLC (collectively,
 8 “Debtor-Appellees”), the appellees herein and the debtors and debtors-in-possession in the
 9 Chapter 11 cases pending in the United States Bankruptcy Court for the District of Nevada
 10 (“Bankruptcy Court”), hereby submit this Response to the Motion to Vacate Deadlines (“Motion”)
 11 filed by the United States of America, on behalf of the Department of the Treasury Alcohol and
 12 Tobacco Tax and Trade Bureau (“TTB”).

13 As a preliminary matter, the Debtor-Appellees object to certain factual and legal assertions
 14 made by the TTB in the Motion, which are erroneous and not supported by the record before the
 15 Bankruptcy Court:

16 1. The TTB asserts that the Bankruptcy Court approved a compromise which
 17 “proposed selling the debtors’ purported assets free and clear of the United States’ liens.”
 18 Motion, 2:7-8. In fact, the TTB has no lien against the assets of the Debtor-Appellees.
 19 The TTB has filed a tax lien against the assets of a non-debtor entity, Twin River Contract
 20 Loading, Inc. (“Twin River”), but has not filed any lien against any assets of any Debtor-
 21 Appellee. In the nearly 1-1/2 years since the Debtor-Appellees’ Chapter 11 cases have
 22 been pending, the TTB has failed to establish a factual or legal basis for the assertion of a
 23 lien against the Debtor-Appellees’ assets.

24 2. The TTB asserts that “the law requires that it should be afforded the chance
 25 to prove, through discovery and an adversary proceeding, that the United States’ liens
 26 attached to these assets with a priority not recognized by the compromise...” Motion, 2: 8-
 27 11. In fact, the TTB failed to file a proof of claim as to seven of the eight Debtor-
 28 Appellees prior to the claims bar date established by the Bankruptcy Court. Therefore, any

claim (whether secured or unsecured) that the TTB may assert against any of such seven Debtor-Appellees is barred pursuant to Rule 3003(c)(2) of the Federal Rules of Bankruptcy Procedure. As to the one Debtor-Appellee (HMT) as to which the TTB filed a proof of claim, such proof of claim contains no meaningful averments demonstrating that the TTB has any valid or enforceable lien against HMT's assets and, hence, such proof of claim is not entitled to a presumption of validity as a matter of bankruptcy law. The Debtors and the Official Committee of Unsecured Creditors have filed jointly an objection to the TTB's proof of claim, demonstrating, among other things, that the TTB's unsupported assertion of a lien against the assets of the Debtor-Appellees fails as a matter of bankruptcy law, and such objection is pending before the Bankruptcy Court. The TTB already has taken both informal and formal discovery in the Debtor-Appellees' Chapter 11 cases. No amount of additional discovery will cure the legal defects in the TTB's arguments regarding its purported lien.

The Debtor-Appellees note that the deadline for the TTB to have filed its opening brief was November 4, 2019, and that the TTB has allowed such deadline to expire without filing a brief. The Debtors cannot, therefore, file any responsive brief.

As to the merits of the Motion, the TTB seeks to vacate the briefing schedule established by this Court on the basis that the TTB seeks to consolidate the three pending appeals (Case Nos. 3:19-cv-00637-MMD, 3:19-cv-00666-MMD and 3:19-cv-00667-MMD) such that the Court will issue a consolidated briefing schedule. However, to date, the TTB has failed to take any action to consolidate the three appeals. The Debtor-Appellees do not oppose the TTB's Motion subject to and conditioned upon the TTB's seeking promptly to consolidate the three pending appeals.

DATED: November 13, 2019

WINTHROP GOLUBOW HOLLANDER LLP

By: /s/ Robert E. Opera
 Robert E. Opera
 Peter W. Lianides
 Counsel for Debtor-Appellees

CERTIFICATE OF INTERESTED PARTIES

In accordance with Fed.R.Civ.P. 7.1 and Local Rule 7.1-1, the undersigned, counsel of record for Debtor Appellees, certifies that the following have a direct, pecuniary interest in the outcome of this case:

In re:

- X-Treme Bullets, Inc., a Nevada corporation
- Ammo Load Worldwide, Inc., an Idaho corporation
- Clearwater Bullet, Inc., an Idaho corporation
- Freedom Munitions, LLC, an Idaho limited liability company
- Howell Machine, Inc., an Idaho corporation
- Howell Munitions & Technology, Inc., an Idaho corporation
- Lewis-Clark Ammunition and Components, LLC, an Idaho limited liability company
- Components Exchange, LLC, an Idaho limited liability company
- KASH CA, Inc.
- David Howell
- Z.B. N.A. dba Zions First National Bank
- CFO Solutions, LLC dba Advanced CFO
- Matthew McKinlay
- Valerie Grindle

These representations are made to enable judges of the Court to evaluate possible disqualifications or recusal.

DATED: November 13, 2019

WINTHROP GOLUBOW HOLLANDER LLP

By: /s/ Robert E. Opera
Robert E. Opera
Peter W. Lianides
Counsel for Debtor-Appellees

PROOF OF SERVICE

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Orange, State of California, and not a party to the above-entitled cause.

My business address is: 1301 Dove Street, Suite 500, Newport Beach, CA 92660.

I served a true copy of the: **DEBTOR-APPELLEES' RESPONSE TO UNITED STATES'S MOTION TO VACATE DEADLINES; CERTIFICATE OF INTERESTED PARTIES**

On **November 13, 2019**, I checked the CM/ECF docket for this case or adversary proceeding and determined that the following persons are on the Court's Service List to receive CM/ECF transmission at the email addresses stated below:

- **Louis Martin Bubala , III** lbubala@kcnvlaw.com, cbrimm@kcnvlaw.com, mmarsh@kcnvlaw.com
- **Stephen R. Harris** steve@harrislawreno.com, norma@harrislawreno.com, ellie@harrislawreno.com, helena@harrislawreno.com
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- **Timothy A. Lukas** tlukas@hollandhart.com; carnold@hollandhart.com; intaketeam@hollandhart.com; abrown@hollandhart.com
- **Robert Opera** ropera@wcghlaw.com, jmartinez@wcghlaw.com
- **Landon Yost** landon.m.yost@usdoj.gov

SERVED BY EMAIL On **November 13, 2019**, I served the following persons and/or entities by email as follows:

Attorney for David Howell - Todd Ringstad, Esq. and Becky Metzner - todd@ringstadlaw.com; becky@ringstadlaw.com

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

November 13, 2019 Jeannie Martinez /s/ Jeannie Martinez

Date Printed Name Signature